

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,
Plaintiff,
vs.
COMMONWEALTH OF PENNSYLVANIA,
NINTH JUDICIAL DISTRICT,
CUMBERLAND COUNTY; CUMBERLAND
COUNTY; S. GARETH GRAHAM,
Individually, and JOSEPH
OSENKARSKI, individually,
Defendants.
CIVIL ACTION
NO. 1:CV 01-0725
(JUDGE YVETTE KANE)

VOLUME 1
Pages 1 to 183

Deposition of: S. GARETH GRAHAM

Taken by : Plaintiff

Date : January 29, 2003, 9:27 a.m.

Before : Emily Clark, RMR, Reporter-Notary

Place : Administrative Offices of
Pennsylvania Courts
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania

APPEARANCES.

DEBRA K. WALLET, ESQUIRE
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
BY: A. TAYLOR WILLIAMS, ESQUIRE
For - Defendant Commonwealth of Pennsylvania
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAFER
BY: JAMES K. THOMAS, II, ESQUIRE
PAUL J. DELLASEGNA, ESQUIRE
For - Defendant Cumberland County

APPEARANCES (continued):

MONTGOMERY, McCRAKEN, WALKER & RHOADS, LLP
BY: DAVID J. MacMAIN, ESQUIRE
For - Defendant S. Gareth Graham

SWEENEY & SHEEHAN, P.C.
BY: JASON G. BATES, ESQUIRE
For - Defendant Joseph L. Osenkarski

ALSO PRESENT:

MS. BARBARA E. VARNER

MR. JOSEPH OSENKARSKI

MS. MELANIE McDONOUGH

1	1-page "Employee Certification"	121
	27 March '81	
2	1-page "Receipt Acknowledgment"	121

STIPULATION

2 It is hereby stipulated by and between the
3 respective parties that signing, sealing, certification and
4 filing are waived; and that all objections except as to the
5 form of the question are reserved until the time of trial.
6
7 S. GARETH GRAHAM, called as a witness, being duly
8 sworn, was examined and testified, as follows:
9 BY MS. WALLET:
10 Q. What is your name, sir?
11 A. S. Gareth Graham.
12 Q. By whom are you employed?
13 A. The Court of Cumberland County, Ninth Judicial
14 District.
15 Q. How long have you been so employed?
16 A. 27, 26, 27 years. Started in September of '77,
17 but had a previous employment with the county from July 26th
18 of '96.
19 Q. Sir, do you have any hearing problems?
20 A. No, I don't.
21 Q. Would there be any reason today why you could not
22 answer my questions completely and truthfully?
23 A. No.
24 Q. Are you on any medication that would interfere
25 with your ability to listen or to respond?

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1 MR. MacMAIN: Just listen to her question and
2 just --
3 THE WITNESS: I just want to --
4 MR. MacMAIN: Okay.

5 BY MS. WALLET:

6 Q. So you requested this meeting primarily to tell
7 them about this greeting card, or for some other reason?

8 A. I requested the meeting to try to defend some of
9 the allegations that Ms. Varner had produced.

10 Q. Other than the card, what did you feel needed to
11 be clarified at that time?

12 MR. MacMAIN: I think it's been answered. He
13 said to clarify what the allegations were.

14 MS. WALLET: And I asked him what did he wish to
15 clarify.

16 THE WITNESS: I just wished to expound on some of
17 the questions they had asked me originally, and then they
18 asked me some additional questions after that.

19 BY MS. WALLET:

20 Q. Well, you went to this meeting to tell them
21 specifically about the greeting card, correct?

22 A. No.

23 Q. What did you go to this meeting to tell them
24 specifically?

25 A. To tell them that I had a defense to her

Page 14

1 allegations.

2 Q. And your defense involved this greeting card?

3 A. That was one of her allegations, so I just
4 responded to her allegations.

5 Q. What other items did you feel that you needed
6 this meeting in order to clarify?

7 A. Whatever the line of questioning they would have
8 given me: Did I discriminate against her in the workplace;
9 no. Things like that. I did jot some of those down, you're
10 talking how many years ago, to try to -- I just can't recall
11 that from exact memory each question they asked.

12 Q. Do you have notes from either one of these
13 meetings?

14 A. No.

15 Q. You said you jotted something down before you
16 went to see these people?

17 A. No. I basically summarized in my mind what
18 questions they had asked, and then I responded to them.

19 Q. And you jotted that down?

20 A. My response? No, I didn't jot my response down.

21 Q. What is it, sir, that you said that you jotted
22 them down?

23 A. The sequence of questions they were asking me,
24 like, the three questions they had asked me, I tried to, you
25 know, write those down to try to remember what they asked me.

Page 15

1 Q. And what happened to those notes?
2 A. I have no idea.
3 Q. You don't presently have them?
4 A. I don't have them.
5 Q. And you don't have any other notes from either
6 one of these meetings?

7 MR. MacMAIN: You mean notes taken during the
8 meeting? Or notes I may have asked him to write down things
9 as part of the defense of this case?

10 BY MS. WALLET:

11 Q. Other than what you have provided to your
12 counsel, do any notes of those meetings exist?

13 A. No.

14 Q. Did you give them anything at this second
15 meeting?

16 A. Absolutely not.

17 Q. Do you have in your possession now the
18 information regarding the production of this greeting card?

19 A. No.

20 Q. Did you take notes of what the manufacturer told
21 you?

22 A. I think I have -- yeah, I think I did take a note
23 and I wrote it on the back of the card, because I called just
24 recently, maybe a month or two months ago.

25 MS. WALLET: And you'll provide those to me, I

Page 16

1 assume?

2 MR. MacMAIN: I may. I mean, I think there might
3 be issues of work product and so forth, but I'll certainly
4 consider it and if I think it's appropriate, I'll produce it.
5 If I don't, I'll let you know that as well.

6 MS. WALLET: You can consider this my formal
7 request that those be produced.

8 MR. MacMAIN: I'd prefer if you sent me a letter.
9 And I'll make a list so it's not missed. If you want to send
10 me a letter with whatever items would you like.

11 MS. WALLET: I believe it falls within the
12 interrogatory that I think you have a duty to supplement.
13 BY MS. WALLET:

14 Q. Other than those two times that you just
15 described, Mr. Graham, did you meet with anyone who told you
16 that they were investigating the charges made by Ms. Varner?

17 A. I had gone to the EEOC. I had gone to the
18 Pennsylvania Human Relations Commission to try to get
19 included in discovery of that information once I found that
20 those things were, they're filed there, yes. And I was
21 denied access there.

22 Q. When did you contact the EEOC?

23 A. Numerous times.

24 Q. And who did you contact there?

25 A. Sylvia Williams. I had driven to Philadelphia

Page 17

Page 19

1 and went to the Bourse Building on the, I think it's the 15th
 2 floor, and I talked to Ms. -- it was a supervisor there, I
 3 think it was, her name's Joan Gamiter. And I had asked to be
 4 included in the EEOC's investigation. And she had informed
 5 me that since you and Ms. Varner had not named me as a
 6 defendant I was not entitled to any information from the EEOC
 7 at that juncture.

8 Q. Did you at any subsequent time receive
 9 information from the EEOC?

10 A. The only information I received from the EEOC
 11 was -- and I made requests, I think I did send a letter
 12 through another counsel, I don't have the copy of that, I
 13 wouldn't know where that's at, but I was seeking out counsel
 14 to try to -- for defending this claim. And I had been to a
 15 multitude of different lawyers to assist me. So I can't
 16 recall exactly who made that request or who -- I think he
 17 directed me to send the letter myself to the EEOC under
 18 freedom of information discovery.

19 Q. And who is he?

20 A. Cowden, William Cowden, in Harrisburg.

21 Q. In any event, did you receive --

22 A. Strokooff and Cowden. Are you familiar with that
 23 firm?

24 Q. I am.

25 A. Okay. So do I have that right?

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1 MR. MACMAIN: She doesn't want to know what you
 2 discussed with any counsel.

3 MS. WALLET: Correct.

4 MR. MACMAIN: Just did you make the request, and
 5 you've answered it, so.

6 THE WITNESS: Yes. Okay.

7 BY MS. WALLET:

8 Q. Did you go to the EEOC during work time?

9 A. No, I did not.

10 Q. Did you take leave?

11 A. Yes.

12 Q. When did you do that?

13 A. I don't know. I can't recall the date.

14 Q. Do you remember what month?

15 A. No.

16 Q. Do you remember what year?

17 A. I took a witness with me down there to meet Miss
 18 Gamiter.

19 Q. And who did you take with you?

20 A. Charlie Mallios, a college roommate of mine.

21 Q. And who is Mr. Mallios, other than your
 22 college -- other than your college roommate, who is he?

23 A. He's just a friend of mine and he was a college
 24 roommate of mine.

25 Q. Does he own some business?

1 A. He owns the Deer Lodge restaurant.

2 Q. You've known him since college?

3 A. Yes.

4 Q. How often do you see him?

5 A. Weekly.

6 Q. Social friends?

7 A. Yes. Our children go to school at the same high
 8 school.

9 Q. Any other relationship with Mr. Mallios? Are you
 10 in business with him in any fashion?

11 A. No, I'm not.

12 Q. No other relationship?

13 A. None.

14 Q. Why did you take Mr. Mallios with you to the
 15 EEOC?

16 A. Probably I was intimidated by the driving into
 17 Philadelphia a little bit, and I wanted somebody, like proof
 18 positive to show that they denied me access to the EEOC
 19 investigation.

20 Q. Why did you think when you went that they were
 21 going to deny you access?

22 A. I didn't know when I went. I wouldn't have
 23 driven down there if I knew they were going to deny me
 24 access. I asked to be included in their investigation.

25 Q. Well, if you took Mr. Mallios with you in order

Page 20

1 to have a witness that they would deny you information --
 2 A. No, I didn't say they would deny me information,
 3 Ms. Wallet. I said I went down there to try to be
 4 interviewed firsthand so -- because they wouldn't answer my
 5 phone calls and they wouldn't include me. They just said
 6 that you're not a named defendant and you have no rights to
 7 defend this claim.

8 I don't know why you didn't, you know, sue myself
 9 and Mr. Osenkarski from the beginning and include us in that
 10 investigation. And that perplexes me as to why you wouldn't
 11 include us at that juncture in the -- and maybe I don't
 12 understand the law, but here I was being named as a
 13 defendant. I was feeling that my Constitutional rights to
 14 discovery had been limited because I couldn't even discover
 15 anything that she had said about me. I couldn't see any
 16 complaints that she had made about me. And I think it's a
 17 flawed federal process, and I'm not saying that as -- as in
 18 layman terms, I don't know -- I didn't know the process, I
 19 was ignorant to the process, and I tried to intelligently
 20 deal with defending this accusation against me. That's what
 21 I was trying to do. That was my intent.

22 Q. So you took Mr. Mallios with you to be a witness
 23 to what the EEOC did or didn't do?

24 MR. MACMAIN: I think it's been asked and
 25 answered.

Page 21

1 THE WITNESS: I answered that a couple times.
 2 MR. MacMAIN: He said that he tried to get the
 3 information through letters and phone calls, and when he
 4 didn't, he drove down there. So I think it's been asked and
 5 answered.

6 BY MS. WALLET:

7 Q. And you took him to help you to navigate the
 8 Philadelphia traffic, correct?

9 A. I took him to allow him to witness that they were
 10 going to deny me or I thought they would deny me access. I
 11 thought maybe they would -- I didn't know where the parking
 12 was, you know. I had been down even to another Philadelphia
 13 lawyer down there and he went down with me to that
 14 Philadelphia lawyer named Alice Ballard. I had been down to
 15 her to try to get representation. I didn't know where the
 16 parking was.

17 He dropped me off on that juncture and went up to
 18 the office to have the interview, and then he did some other
 19 dealings that he had to do at Temple at the time or Temple
 20 University. And then he came back and picked me up after I
 21 was done with that. So he rode along the second time for the
 22 same reason.

23 Q. Did you take Mr. Mallios because you believed
 24 Mr. Mallios had information relative to Ms. Varner's claim?

25 A. Mr. Mallios didn't know anything about

Page 23

1 A. Yes.
 2 Q. Know the rest of your family?
 3 A. That's my immediate family. My parents are both
 4 deceased. He did know my parents.

5 Q. Okay. You said you went to the PHRC. Did you
 6 just phone them, or did you go?

7 A. I think I sent a letter to a Louise Oakley or she
 8 sent me a letter from Louise Oakley, that she sent me a
 9 response that there had been no claim filed with them.

10 Q. Do you have any of those documents?

11 A. I would have to find them. I don't know where
 12 they're at. I might have them, I might not. I had them at
 13 one point. I mean, I had the letter she sent back to me.

14 Q. Now, I asked you did you meet with anyone who
 15 indicated that they were investigating the allegations made
 16 by Ms. Varner, and you told me, of course, of the two
 17 meetings with Mr. Deluce, your efforts to obtain information
 18 from the PHRC and the EEOC --

19 A. That's correct.

20 Q. Anyone else?

21 A. I had met with Jim Thomas and Paul Dellasega on
 22 July 26th, 1999 -- I think '99. I remember that because it was
 23 my mother's birthday, so.

24 Q. And did they ask you to come to meet with them,
 25 or did you request that meeting?

Page 22

1 Ms. Varner's claim.

2 Q. Did he know anything about your relationship
 3 between Ms. Varner and yourself?

4 A. No, he did not.

5 Q. So Charlie Mallios doesn't know anything about
 6 this case?

7 A. That's correct.

8 Q. Only what you've told him?

9 A. That's correct.

10 Q. Would you consider Mr. Mallios to be your best
 11 friend?

12 A. Yes, probably.

13 Q. How long do you think he's been your best friend?

14 A. Well, since I met him in college around 1974 or
 15 '75.

16 Q. And have you seen him weekly since then?

17 A. No, not weekly.

18 Q. You've seen him weekly only in the last several
 19 years because of your children?

20 A. Right.

21 Q. Have you seen him weekly since, let's say, 1990?

22 A. Yes.

23 Q. Does he know your wife?

24 A. Yes, he does.

25 Q. Does he know your children?

Page 24

1 A. I think they had asked to talk with me because
 2 they were new counsel for the county. And the meeting took
 3 place in Dave Foster's office.

4 Q. Why was that?

5 A. Truthfully? I wanted them to come to my
 6 attorneys. I didn't want to go to their office to be
 7 interviewed.

8 Q. And you considered Mr. Foster to be your attorney
 9 at that time?

10 A. I'm sure, you know, that because he had contacted
 11 you, Ms. Wallet, so that's self explanatory.

12 Q. Did you consider Mr. Foster to be your attorney
 13 at that time?

14 A. No. He was providing me with some legal advice.
 15 MR. MacMAIN: Her question very simply is:

16 Mr. Foster was your attorney, you had retained him.

17 THE WITNESS: I had paid him funds, right.

18 BY MS. WALLET:

19 Q. And did you retain him to represent you with
 20 regard to the complaints made by Ms. Varner?

21 A. No. He advised me his specialty was not civil
 22 litigation.

23 Q. So you had him as your attorney in other matters
 24 but you spoke to him about these matters as well?

25 A. No. I never had him retained as an attorney. He

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1 there was a big flap.

2 MR. MACMAIN: Gary, all she asked was what Ward's
3 role.

4 BY MS. WALLET:

5 Q. And Mr. Ward is an employee of the County of
6 Cumberland?

7 A. He was the chief clerk.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Is he still the chief clerk?

11 A. No.

12 Q. Who is the chief clerk now?

13 A. John Connolly.

14 Q. Do you know when Mr. Ward left and Mr. Connolly
15 took over?

16 A. I think recently this year, April of this year.

17 Q. 2002?

18 A. Yes.

19 Q. We're now in 2003, but you mean 2002?

20 A. 2003, I'm sorry.

21 Q. 2000 --

22 A. No. He left -- I'm sorry. 2002.

23 Q. So you were telling me what happened after the
24 split. When did the split occur?

25 A. Whenever we received the promotions and Judge

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1 Sheely put a letter to that effect out to the commissioners
2 on how he was going to realign the two staffs.3 Q. Did you have to compete for a promotion at that
4 time?

5 A. Are you asking was it advertised or was it --

6 Q. Whatever you know about how you got the job.

7 A. I think Ken went upstairs and highlighted the
8 expletives to our employment and our performance. And when
9 Judge Sheely made this memorandum, he said Gary Graham
10 graduated from York College in 1975, he holds a bachelor of
11 science degree in this, he has been a PO-II in good standing
12 for so many years. And he was -- and Judge Sheely and Ken
13 and Joe and John basically made the decision.14 MR. MACMAIN: Can I just ask one question? You
15 used the term expletives, expletives meaning curse words?
16 Did you mean experiences?

17 THE WITNESS: Experiences, I'm sorry.

18 MR. MACMAIN: I thought that's what you meant.

19 BY MS. WALLET:

20 Q. Okay. So after this split, what position did you
21 have?

22 A. After the split I was the Juvenile supervisor.

23 Q. And how many individuals did you supervise?

24 A. There was a total staff complement of 12 POS.

25 Q. My question was: How many did you supervise?

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1 Did you supervise all 12?

2 A. Yes, ma'am.

3 Q. And in your supervisory role, what duties did you
4 have?5 A. To review the daily time sheets that were
6 submitted.7 Q. That's what was used to pay overtime, for
8 example?

9 A. Yes. That was, um-hum.

10 Q. Okay.

11 A. I also did case review, close-out review. I
12 helped prepare the new budget that we had no experience on.13 I had been a previous member of the Woodside
14 Detention Center, the detention facility that we used in
15 Harrisburg, and then became Woodside, and it was -- I was on
16 there for 11 years. And I was there during the construction
17 of the Schaffner Youth Center, which it is today. And I was
18 the Court board representative. They had a you, know
19 advisory, board it was called.

20 Q. And who you appointed you to that?

21 A. Judge Sheely. And I filled Joe's position. Joe
22 had been on it for a number of years. Its inception,
23 Woodside was somewhere around 1977, when they built Woodside.
24 Joe was on it shortly thereafter. And then when he assumed,
25 when he assumed, when I think I became a PO-II somewhere

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2 on how he was going to realign the two staffs.3 Q. Did you have to compete for a promotion at that
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10 graduated from York College in 1975, he holds a bachelor of
11 science degree in this, he has been a PO-II in good standing
12 for so many years. And he was -- and Judge Sheely and Ken
13 and Joe and John basically made the decision.14 MR. MACMAIN: Can I just ask one question? You
15 used the term expletives, expletives meaning curse words?
16 Did you mean experiences?

17 THE WITNESS: Experiences, I'm sorry.

18 MR. MACMAIN: I thought that's what you meant.

19 BY MS. WALLET:

20 Q. Okay. So after this split, what position did you
21 have?

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25 Q. My question was: How many did you supervise?

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1 around '85, that would make about 11 years I was on it, till
2 '96. So then I took that position.3 Q. Okay. So you were listing for me your
4 supervisory duties.

5 A. Okay.

6 Q. To whom did the budget information go?

7 A. To the county commissioners, eventually. I think
8 to the chief clerk to review.9 Q. Do you agree that it's the county that determines
10 the budget for the Juvenile Probation Department?

11 MR. MACMAIN: If you know.

12 THE WITNESS: No, I'm not exactly sure. I know
13 there's state grant money given in the Adult section and the
14 Juvenile section. There's different contributions from the
15 state that appropriate money for the operation of the
16 Juvenile Probation office and the Adult Probation office.
17 And I think the budget gets submitted with those figures and
18 then the county makes a decision as to what items are
19 approved or disapproved.

20 BY MS. WALLET:

21 Q. As a supervisor, did you make case assignments?

22 A. Yes, I did.

23 Q. You determined which of your officers got which
24 cases?

25 A. Yes.

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1 in my car. I never had a gun in my car during supervisions.
 2 Q. So if Ms. Varner says she saw a gun in your glove
 3 compartment, that's a lie?
 4 A. **Absolutely.**
 5 Q. And if someone else said they saw a weapon in
 6 your glove compartment, that's a lie as well?
 7 A. **Absolutely.**
 8 Q. Now, were you required to have weapons training
 9 as a probation officer?
 10 A. It was an elective. People that wanted to have,
 11 wanted it, were able to participate in it as part of their
 12 training, if they chose.
 13 Q. Did you elect to do that?
 14 A. **I did for a couple years.**
 15 Q. Are you certified in weapons of any kind?
 16 A. **Not at all.**
 17 Q. Is there a certification program that you could
 18 be eligible for?
 19 A. **Absolutely, yes.**
 20 Q. But you've chosen not to do that?
 21 A. **I've chosen not to do that.**
 22 Q. Is there any requirement that you show any
 23 proficiency in the use of a weapon in your position as a
 24 probation officer?
 25 A. **No.**

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1 Q. Is there any requirement that you show
 2 proficiency in the use of a weapon for any of the duties
 3 related to your employment as a probation officer?
 4 A. **No.**
 5 Q. Are you licensed to carry a handgun?
 6 MR. MACMAIN: Licensed unrelated to work --
 7 THE WITNESS: Licensed related to work?
 8 MR. MACMAIN: -- I think your question is.
 9 BY MS. WALLET:
 10 Q. My question is: Are you licensed to carry a
 11 handgun?
 12 A. **Now? No.**
 13 Q. At any time since 1990?
 14 A. **I think I had a license to carry a handgun from**
 15 **the Sheriff's Department.**
 16 Q. What kind of license was it?
 17 A. **Typical five-year protection permit or whatever**
 18 **they used to call it, I don't know.**
 19 Q. And when do you think you had such a permit?
 20 A. **I had it for five years, so I don't know when it**
 21 **was renewed. You could get those records from the Sheriff's**
 22 **Department.**
 23 Q. So you're not sure when you had a permit?
 24 A. **Probably the last five years, the previous five**
 25 **years, and probably the previous 10 years. I think I renewed**

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1 **it once.**
 2 Q. But you don't have it now?
 3 A. **No.**
 4 Q. And why don't you have it now?
 5 A. **I didn't reapply.**
 6 Q. And do you remember when it was that you would
 7 have come up for reapplication?
 8 A. **Last year sometime.**
 9 Q. Was there a reason why you didn't reapply?
 10 A. **I have no interest in carrying a handgun.**
 11 Q. Why do you own three or four of them?
 12 A. I'm a hunter. I'm a -- that's why I own them.
 13 Q. You're just a gun guy?
 14 A. **Well, I'm a hunter.**
 15 Q. Okay.
 16 MR. MACMAIN: Are we going to go on to a
 17 different area? A short break?
 18 MS. WALLET: Yes, that's fine. Let's take a
 19 short break.
 20 (Recess taken from 10:49 until 10:59 a.m.)
 21 BY MS. WALLET:
 22 Q. Mr. Graham, when did you first meet Barbara
 23 Varner?
 24 A. **1990.**
 25 Q. On what occasion did you meet her?

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1 A. Bob Holtzberger, a Cumberland County Children and
 2 Youth worker, brought her around to introduce her to the
 3 Probation staff after she was hired in Children and Youth
 4 Services.
 5 Q. And when did you first have some supervisory
 6 relationship over Ms. Varner?
 7 A. **When I was promoted to supervisor.**
 8 Q. Did you play any role in the hiring of Ms. Varner
 9 in the Probation office?
 10 A. I talked to Joe that I had worked companion cases
 11 with Mrs. Varner and I thought that she handled them well.
 12 And I conveyed that to Joe and Ken Bolze when we were looking
 13 for applicants for the -- we had a Family Preservation grant
 14 and we had three positions available.
 15 Q. Did you recommend her for one of those positions?
 16 A. **No.**
 17 Q. Now, prior to her coming to the Probation staff,
 18 how much association did you have with Ms. Varner?
 19 A. **Extensive.**
 20 Q. Would you describe what would cause you to be
 21 associated with her?
 22 A. In a work environment or a personal environment?
 23 Q. Either. Let's start with work.
 24 A. I worked companion cases with her. Am I allowed
 25 to say the names or are we going to -- is the record still

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1 Did you deny her access to gun training, did you sexually,
 2 you know, harass her. No. No. No, no, no. That's all I
 3 answered.

4 Q. And then the second meeting which you
 5 initiated --

6 A. I went down --

7 Q. -- you could tell him whatever you wanted,
 8 correct?

9 A. That's correct.

10 Q. But you didn't tell him then, either?

11 A. No, I didn't. Because I had --

12 Q. I'm sorry?

13 A. I hadn't told my wife, I hadn't told anybody, so,
 14 at the juncture that he was interviewing me. That was April
 15 29th of I think '97.

16 Q. So in April of '97 you hadn't told anyone that
 17 you were having sex with Ms. Varner?

18 A. No one.

19 Q. Did you tell your friend Charlie Mallios?

20 A. No one.

21 Q. Did you ever tell your friend Charlie Mallios?

22 A. No, not till after this thing came out.

23 Q. Okay. Did he know it when he went with you to
 24 the EEOC?

25 A. No.

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1 Q. How much later did you wait to tell Mr. Mallios?
 2 A. I don't remember that.

3 Q. Well, do you remember whether, in fact, you told
 4 him?

5 A. Yes, I told him.

6 Q. And do you remember whether you initiated the
 7 conversation in which you said: I need to tell you
 8 something?

9 A. Yes, I did.

10 Q. What did you tell him?

11 A. I told him that I had an affair with her.

12 Q. Did you tell him anything else?

13 A. No.

14 Q. Did you tell him specifically you had sex with
 15 her?

16 A. Sure.

17 Q. Have you seen Ms. Varner naked?

18 A. Yes.

19 Q. Totally naked?

20 A. Yes.

21 Q. On what occasions?

22 A. Different occasions. I mean, she rented a room,
 23 oh, man, at the Fairfield Inn.

24 Q. When was that, sir?

25 A. I'm not --

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1 MR. MACMAIN: If you don't know the date --
 2 THE WITNESS: Somewhere in May of '93. Maybe the
 3 23rd or 26th of May, I'm not sure. Something like that.
 4 26th of May. She rented a room.

5 BY MS. WALLET:

6 Q. She rented the room?

7 A. Yeah. We had got together, wanted to have more
 8 time together other than activities that were in our car or
 9 in her home or at my house.

10 Q. So prior to the Fairfield Inn, you had had sex
 11 with her in the car, in her house, and --

12 A. In my home.

13 Q. -- at other locations?

14 A. In my home, um-hum, three times. Twice in the
 15 house and once in the garage.

16 Q. When you say house and garage, are you talking
 17 about her home or your home?

18 A. My home. My home, two times in the house, one in
 19 the back room, one in the living room, and one in the garage.

20 Q. Okay.

21 A. And at her home.

22 Q. Let's go back to the Fairfield Inn and then we'll
 23 move to the others.

24 A. Okay.

25 Q. So tell me what happened on the occasion that you

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1 had sex with Ms. Varner at the Fairfield Inn.

2 A. She rented a room with her credit card under her
 3 previous married name, Barb Spidle. She paid for the room
 4 with her credit card. And we went down to, I think it was
 5 room 106. It was on the end of the Fairfield Inn. And I met
 6 her after work around three o'clock. I took off early. I
 7 went to the West Shore Diner, purchased some club sandwiches,
 8 brought a bottle of Amaretto. We went into the room, we had
 9 oral and vaginal sex till about from 3:00 till I think 6:30
 10 that night. I had to teach DUI school at Trinity, so I left.

11 She signed the registration card there at the
 12 Fairfield Inn. And I tried to retain, you know, I tried to
 13 receive that card, and that company is -- it was Sage
 14 Industries and it was associated with the Marriott at the
 15 time. And I went down later to that Fairfield Inn and tried
 16 to get a copy of her receipt and a copy of the registration
 17 form she signed. And I talked --

18 Q. And when did you do that, sir?

19 A. That was a couple years when she -- that was
 20 after she started this sexual harassment complaint.

21 Q. So after 1997?

22 A. Yes. So that might have been four years later.
 23 But I talked to a Daniel Hoy and a Dan Matiattose and then I
 24 called an attorney for Sage Industry, Dan Queen out in
 25 Colorado Springs, to try to get the receipt.

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1 Q. Were you successful in getting the receipt? 2 A. I haven't been permitted to access that because 3 it was charged on her credit card. 4 Q. Does that mean no, you weren't successful? 5 A. No, that doesn't mean that. That means it can 6 still be accessible if I show cause. But I wasn't named in 7 any lawsuit at that time because you and Mrs. Varner had 8 proceeded through the EEOC proceedings which I was prohibited 9 to try to get discovery from.	1 had it. I know the place that we had it. I know it was 2 after a DUI school. It was along the road to the state 3 correctional institution, because we would meet at where she 4 used to work at the Cedar Run, yeah, Cedar Run School. She 5 used to work there. So when I would meet her after the DUI, 6 she would say that she would meet me at the Cedar Run Capital 7 Area Intermediate School. 8 So we met there after a DUI school and engaged in 9 anal sex along a road, right -- there's a lime quarry right 10 there, and there's a single tree right along the gates of the 11 state correctional institution, and that's exactly where it 12 happened.
10 Q. My question, sir, is: Do you have in your 11 possession now any document related to a registration card or 12 any credit card information related to the Fairfield Inn 13 sexual encounter?	13 Q. So you just pulled right in there and had anal 14 sex?
14 A. I answered that. I do not. But that's not to 15 say that they haven't retained tape it.	15 A. I met her earlier in the evening at the parking 16 lot of Capital -- or Cedar Run, and Cedar Run was right 17 beside there. So we drove to the area, got involved in a 18 sexual encounter and then had anal sex.
16 MR. MACMAIN: She isn't interested -- she just 17 wants to know if you had anything now.	19 Q. Was it during daylight hours? 20 A. Nighttime. 21 Q. Middle of the night? 22 A. It would have probably been around 9:00, 9:30 -- 23 between 9:30 and 10:00.
18 THE WITNESS: No.	24 Q. And how long did that last? 25 A. Not long.
19 MR. MACMAIN: The answer was no.	
20 BY MS. WALLET:	
21 Q. All right. So you spent the afternoon at the 22 Fairfield Inn between approximately three o'clock and six 23 o'clock?	
24 A. Right.	
25 Q. Okay. And what were Ms. Varner's sexual	
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1 preferences? 2 A. To have intercourse, oral and vaginal 3 intercourse. 4 Q. What was her preference? 5 A. Both. 6 Q. What was your preference? 7 A. Both. 8 Q. Did you ever have anal intercourse with her? 9 A. On one occasion. 10 Q. When was that, sir? 11 A. I don't know the date. It was after a DUI 12 school. She would meet me. And previous to that she had 13 shown me a Redbook article on anal sex as we were delivering 14 a juvenile up to State College. 15 Q. Do you still have that article? 16 A. No. She showed me the article. 17 Q. What did she say? 18 A. She was interested in having anal sex. 19 Q. How long was it after she showed you the article 20 that you did it? 21 A. I don't know. 22 Q. Months, weeks? 23 A. I don't know. 24 Q. Days? 25 A. I have no idea. I don't know the date that we	1 Q. A couple minutes? 2 A. 10 minutes. 3 Q. Were you fearful of being discovered doing this 4 along the side of the road? 5 A. Sure. You know, we would take a remote location 6 each time. I mean, we took those type of precautions because 7 I was aware and she was aware that you can be arrested in 8 your car for having sex. So usually we would drive to 9 out-of-county destinations so in case we would ever get 10 interrupted we wouldn't be cited with a disorderly conduct 11 citation by a police department and that wouldn't go through 12 the Cumberland County, you know, court authorities. 13 Q. So you thought if you got cited in another county 14 that that wouldn't get back to Cumberland County? 15 A. Sure. Yeah. 16 Q. I don't understand. Why would you do it out of 17 county? 18 A. We would drive to out-of-county locations and 19 engage in sex during this time that we were driving around 20 together and meeting one another. 21 Q. Is New Cumberland in Cumberland County? 22 A. No, that's -- we would go to Goldsboro. We would 23 park -- she would park her car. She drove a Cabriolet and it 24 was quite a significant car because it was an aqua blue car 25 and it had a white roof on. She was always fearful for her

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<p>1 over?</p> <p>2 A. No.</p> <p>3 Q. What did you think would happen after that?</p> <p>4 A. I didn't know what was going to happen.</p> <p>5 Q. When was the first time after you had the meeting</p> <p>6 with Judge Sheely that someone spoke to you about</p> <p>7 Ms. Varner's complaints?</p> <p>8 A. The first time that somebody spoke to me about</p> <p>9 Ms. Varner's complaint after talking with Judge Sheely, I</p> <p>10 don't know. I don't know if anybody spoke to me about it.</p> <p>11 Q. Do you know whether someone spoke to you before</p> <p>12 you learned that you had been named as a defendant in the</p> <p>13 federal court suit?</p> <p>14 A. I think the formal notice that I received was</p> <p>15 from your office asking me to acknowledge your federal</p> <p>16 lawsuit, and I didn't ever send you an acknowledgment of your</p> <p>17 notice because I didn't want to --</p> <p>18 Q. Okay. So you think between the time you met with</p> <p>19 Judge Sheely and when you received the federal Complaint, no</p> <p>20 one spoke to you about Ms. Varner's allegations?</p> <p>21 A. No.</p> <p>22 Q. No, you don't think so? Or no, no one did?</p> <p>23 A. No, no one spoke to me about anything further.</p> <p>24 Q. Were you angry at being sent to the prison?</p> <p>25 A. No. Furious.</p>	<p>1 BY MS. WALLET:</p> <p>2 Q. Do you remember anything else about what you said</p> <p>3 or what Judge Hoffer said at that time?</p> <p>4 A. I just remember -- I didn't make any comments but</p> <p>5 I remember feeling that he treated me like a dog, where I had</p> <p>6 to sit in front of him and I couldn't speak and I couldn't</p> <p>7 give an explanation as to my frustration in defending these</p> <p>8 accusations.</p> <p>9 Q. Did he tell you at that time that your transfer</p> <p>10 to Adult Probation had anything to do with the allegations</p> <p>11 that were made by Ms. Varner?</p> <p>12 A. No.</p> <p>13 Q. Did you believe that they were related to the</p> <p>14 allegations that Ms. Varner made?</p> <p>15 A. Did I believe? Sure, I believed that.</p> <p>16 Q. Why did you believe that?</p> <p>17 A. I didn't know what other reason he would transfer</p> <p>18 me.</p> <p>19 Q. Did you tell anybody that day that you had been</p> <p>20 transferred?</p> <p>21 A. I think so.</p> <p>22 Q. Who did you tell?</p> <p>23 A. I walked in the Probation office. Denny Drachbar</p> <p>24 caught me at the first counter and was giving me a raft of</p> <p>25 baloney over being upstairs talking to Hoffer about, you</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. And what, if anything, did you do to express your</p> <p>2 anger and furiousness?</p> <p>3 A. There was nothing I could do.</p> <p>4 Q. Did you complain to anyone in the supervisory</p> <p>5 chain?</p> <p>6 A. No. It was a decision by Judge Hoffer.</p> <p>7 Q. Did you express displeasure to Judge Hoffer at</p> <p>8 his action?</p> <p>9 A. The day that he -- it was a Monday. It was</p> <p>10 more -- he called me into his office said that I'm</p> <p>11 transferring you to the Adult Probation office. I was there</p> <p>12 less than three minutes. I implored him to let me speak and</p> <p>13 to the events that have happened over the last couple years,</p> <p>14 and I asked him not to put me in Adult Probation and put me</p> <p>15 down in -- he said, you're going down, you're going to be</p> <p>16 transferred to the Adult Probation office, go clean out your</p> <p>17 desk, take the rest of the day off and report to John Roller</p> <p>18 the next day.</p> <p>19 I said, would you please let me explain the</p> <p>20 circumstances around the last year and a half, and he said</p> <p>21 no. And he said -- I said, can you give me a reason why I'm</p> <p>22 being transferred, and he said, I've lost confidence in you.</p> <p>23 Prior to that week --</p> <p>24 MR. MACMAIN: Gary, just answer her question. If</p> <p>25 she wants more, she'll ask you for more.</p>	<p style="text-align: right;">Page 164</p> <p>1 know, why are we having staff meetings now again. And I just</p> <p>2 said, well, you won't have to worry about that, you won't</p> <p>3 have to be bugging me about it because I've been sent to the</p> <p>4 prison or, yeah, sent to the prison.</p> <p>5 Q. Did you tell anybody else?</p> <p>6 A. I think I told Joe.</p> <p>7 Q. What did you tell Joe?</p> <p>8 A. I think Tom Boyer was in his office. I said,</p> <p>9 I've just been terminated and I've been terminated from my</p> <p>10 position and I'm to report to John Roller tomorrow morning.</p> <p>11 Q. Did you use the F word?</p> <p>12 A. I don't think so.</p> <p>13 Q. Anybody else at that little gathering use the F</p> <p>14 word?</p> <p>15 MR. MACMAIN: Objection as to form, that little</p> <p>16 gathering.</p> <p>17 BY MS. WALLET:</p> <p>18 Q. Just my reference to Joe and Tom Boyer.</p> <p>19 A. Joe and Boyer being in Joe's office.</p> <p>20 Q. Yes.</p> <p>21 A. No, I didn't use the F word.</p> <p>22 Q. My question was: Did anyone else use the F word?</p> <p>23 A. No. No, they didn't. They were as shocked as I</p> <p>24 was.</p> <p>25 Q. Were you angry at that time?</p>